

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FILED
U.S. DISTRICT COURT
NOV 12 2004

AMENDED P 387

FREDRICK J. BUSH,)
Petitioner)
v.)
JOSEPH MCDONOUGH,)
Respondent.)

Civil Action No. 04-12122-JLT

**RESPONDENT'S MEMORANDUM OF LAW IN SUPPORT OF
HIS MOTION TO DISMISS**

Respondent Joseph McDonough, in his capacity as the Sheriff of Plymouth County, Massachusetts (the “Respondent”), hereby submits this Memorandum of Law in support of his Motion to Dismiss (the “Motion”) the habeas corpus petition (the “Petition”) filed by Petitioner Fredrick J. Bush (the “Petitioner”).¹ The Petition must be dismissed because the Petitioner has failed to satisfy the statutory requirement that he first exhaust state remedies.²

¹ In accordance with this Court’s Order dated October 12, 2004, the Respondent has attached documents reflecting whether the Petitioner previously exhausted state remedies with respect to the matters raised by the Petition. Specifically, attached hereto as Exhibit A is a true and accurate copy of the docket from the Petitioner’s underlying criminal case, Commonwealth v. Bush, Case No. PLCR2002-00091 in the Plymouth County Superior Court (the “Plymouth Docket”), and attached hereto as Exhibit B is a true and accurate copy of the docket from an interlocutory appeal filed by the Petitioner, Case No. SJ-2002-0558 in the Supreme Judicial Court of Massachusetts (the “SJC Docket”). The offering of such documents is not meant to imply that the Respondent considers the Petitioner to have exhausted state remedies. In fact, the Respondent takes a position to the contrary, as explained herein.

² Given that the Petition must be dismissed for the grounds stated herein, the Respondent does not address herein the merits of the Petition. Should this Court rule that the Petitioner may proceed with his habeas corpus action, the Respondent respectfully requests the opportunity to file an answer and a proposed scheduling order for the parties to brief the merits of the Petition.

BACKGROUND

The Petitioner is currently an inmate at the Plymouth County Correctional Facility, which is located in Plymouth, Massachusetts and operated by the Plymouth County Sheriff's Department. His incarceration arises from convictions on violent and weapons-related offenses.

On February 15, 2002, an indictment was returned against him on the following charges: distributing or manufacturing a Class B substance, phencyclidine/cocaine (Count I); resisting arrest (Count II); armed assault with intent to murder (Count III); assault and battery with a dangerous weapon (Counts IV and VI); possessing or transferring a dangerous weapon without a firearms identification card (Count V); and committing a drug offense in the vicinity of school property (Count VII). (Plymouth Docket at 3, 8-9.) He was arraigned before the Plymouth County Superior Court on March 8, 2002. (*Id.* at 3.)

The Superior Court's docket reflects that the Petitioner filed numerous pretrial motions. Among these was a motion to suppress evidence seized by the government, which was filed on October 4, 2002 and denied on December 9, 2002. (*Id.* at 5.) Consequently, on December 16, 2002, the Petitioner filed a Notice of Interlocutory Appeal and petitioned the Supreme Judicial Court of Massachusetts ("SJC") for leave to file an interlocutory appeal of the denial of his motion to suppress. (*Id.* at 3; SJC Docket at 1.) The SJC (Greaney, J.) denied his request for an interlocutory appeal on February 21, 2003. (SJC Docket at 1.)

Between October 14 and October 16, 2003, the Superior Court (Hinkle, J.) dismissed Count III of the indictment on a motion by the Commonwealth, and it allowed the Petitioner's motion for a required finding of not guilty as to Count I of the indictment, but not as to the other remaining counts. (Plymouth Docket at 6-7.) On October 17, 2003, following a jury trial, the Petitioner was found guilty on Counts II, IV, V, VI, and VII. (*Id.*) On Count II, he was given a

sentence of between two years and two years and one day at the Massachusetts Correctional Institution at Cedar Junction (“MCI - Cedar Junction”), but was given 680 days of credit for time served. (Id. at 7.) On each of Counts IV and V, he was sentenced to two years at the Plymouth County Correctional Facility. (Id.) The Petitioner was also sentenced to serve two years on probation on Count VI and two concurrent years on probation on Count VII. (Id.) Additionally, the court assessed a \$150.00 drug fee and a \$90.00 victim-witness fee, and it imposed terms of probation that included drug testing, random urinalyses, anger management, and the payment of a \$65.00 monthly probation supervision fee. (Id.)

On October 22, 2003, the Petitioner filed a nonspecific Notice of Appeal. (Id. at 7; Notice of Appeal of 10/22/03, a true and accurate copy of which is attached hereto as Exhibit C.) Then, on October 31, 2003, the Petitioner filed another Notice of Appeal challenging, in particular, his sentence to MCI-Cedar Junction on Count II. (Plymouth Docket at 8.) His appeal of the sentence on Count II was referred to the Appellate Division of the Superior Court, and it was dismissed without prejudice and without a hearing on July 23, 2004. (Id.)

The Petitioner filed additional papers in state court following his trial. In particular, he filed the following pro se: a November 17, 2003 motion to waive his victim-witness, drug, and probation supervision fees; a November 24, 2003 nonspecific notice of appeal; a November 24, 2003 motion to revise and revoke his sentence, which was held by the court on the Petitioner’s request; a June 24, 2004 motion for release from unlawful restraint; and a September 7, 2004 motion to compel the Superior Court to take action on his June 24, 2004 motion. (Id.; Notice of Appeal of 11/24/03, a true and accurate copy of which is attached hereto as Exhibit D; Motion to Compel of 9/7/04, a true and accurate copy of which is attached hereto as Exhibit E.) At no

point, however, did the Petitioner commence a direct appeal of any of his convictions, notwithstanding his several notices of appeal.

The Petitioner filed his Petition requesting habeas corpus relief on October 5, 2004.

ARGUMENT

The Petitioner failed to satisfy the statutory requirement that he exhaust state remedies prior to filing his Petition.

The Petitioner is barred from pursuing this action because he failed to satisfy the statutory requirement that he exhaust his state remedies prior to filing his Petition. This exhaustion requirement is codified at 28 U.S.C. § 2244, which provides in relevant part as follows:

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that –

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or
(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

...

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

28 U.S.C. § 2244, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), P.L. No. 104-132, Title I, § 104, 110 Stat. 1218 (effective April 24, 1996).

The exhaustion requirement is primarily designed to promote comity in our system of federalism, as the U.S. Supreme Court has explained:

The exhaustion doctrine is principally designed to protect the state court's role in the enforcement of federal law and prevent disruption of state judicial proceedings. . . . Because “it would be unseemly in our dual system of government for a federal district court to upset a state court

conviction without an opportunity to the state courts to correct a constitutional violation,” federal courts apply the doctrine of comity, which “teaches that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter.”

Rose v. Lundy, 455 U.S. 509, 518 (1982) (quoting Darr v. Burford, 339 U.S. 200, 204 (1950), overruled in non-relevant part by Fay v. Noia, 372 U.S. 391 (1963)); see also Duckworth v. Serrano, 454 U.S. 1, 3 (1981) (“The exhaustion requirement . . . serves to minimize friction between our federal and state systems of justice by allowing the State an initial opportunity to pass upon and correct alleged violations of prisoners’ federal rights.”); Nadworny v. Fair, 872 F.2d 1093, 1096 (1st Cir. 1989) (explaining that exhaustion requirement embodies “the federal sovereign’s respect for the state courts’ capability to adjudicate federal rights”); Mele v. Fitchburg Dist. Court, 850 F.2d 817, 819 (1st Cir. 1988) (noting that exhaustion requirement “ensures that state courts have the first opportunity to correct their own constitutional errors,” enables federal courts to accord appropriate respect for state sovereignty, and promotes comity by minimizing friction between federal and state justice systems). An additional benefit of the requirement is that “claims that have been fully exhausted in state courts will more often be accompanied by a complete factual record to aid the federal courts in their review.” Rose, 455 U.S. at 519.

In light of these important purposes, “a habeas petitioner bears a heavy burden to show that he fairly and recognizably presented to the state courts the factual and legal bases of his federal claim.” Adelson v. DiPaola, 131 F.3d 259, 262 (1st Cir. 1997) (noting that “setting forth the factual underpinnings of a claim is insufficient, in and of itself” as the “petitioner must also elucidate the legal foundation of his federal claim”); see also Nadworny, 872 F.2d at 1096 (stating that state prisoner must present both factual and legal underpinnings of claim to state

courts for exhaustion requirement to be found satisfied). Moreover, it is not sufficient for a petitioner to raise his federal claims merely through a motion in state trial court or even an appeal to an intermediate court. Rather, he must “present, or do his best to present, his federal claim to the state’s highest tribunal.” Adelson, 131 F.3d at 263; see also Mele, 850 F.2d at 819-20 (stating that it has long been the rule that power of highest state court must be exhausted before federal court will consider questions posed in habeas petition; affirming that “[i]t is not enough merely to raise an issue before an intermediate court; one who seeks to invoke the federal habeas power must fairly present – or do his best to present – the issue to the state’s highest tribunal”; and noting that Massachusetts petitioner was obliged to try to bring his constitutional objections before SJC to preserve them for federal habeas review).

The Petitioner here cannot meet his heavy burden, because he has not even approached an exhaustion of state remedies. Indeed, he has never filed a direct appeal of his conviction or otherwise made any attempt to place his conviction squarely before the SJC. The Petitioner has filed papers, to be sure. These have included the following: an interlocutory appeal of a motion to suppress evidence seized by the government; an appeal to the Appellate Division of his sentence; two other notices of appeal; a motion to waive his victim-witness, drug, and probation supervision fees; a motion to revise and revoke his sentence; a motion for release from unlawful restraint; and a motion to compel the Superior Court to take action on his motion for release from unlawful restraint. However, only the first of these, his interlocutory appeal, was presented to the state’s highest tribunal.³ His filing of that appeal does not satisfy the exhaustion requirement.

³ The other motions filed by the Petitioner in the trial court could not have satisfied the exhaustion requirement even if they had been appealed to the SJC, because the motions did not attack the merits of the Petitioner’s conviction. See Bland v. Hall, 2002 WL 989532, at *2 (D. Mass. May 14, 2002) (stating that a motion to revise and revoke “does not challenge the legal sufficiency of the conviction or imposition of the sentence. Rather, it provides a mechanism whereby the trial judge may reconsider a concededly lawful sentence to remedy some perceived unfairness.”), aff’d, 2003 WL 1825681 (1st Cir. Apr. 8, 2003); Sheriff of Suffolk County v. Pires, 438 Mass. 96, 99-100, 777 N.E.2d 1231, 1233-34 (2002) (stating that state writ of habeas corpus cannot be used to challenge merits of

First, an interlocutory appeal to the SJC will not be considered an exhaustion of state remedies where the Petitioner retains the ability to raise his federal claims after trial through the state's direct appellate process. See Hutson v. Justices of Wareham Dist. Court, 552 F. Supp. 974, 977-78 (D. Mass. 1982) (noting that, in Costarelli v. Massachusetts, 421 U.S. 193 (1975), "the Supreme Court found that a decision denying relief under the Court's superintendency powers is not a final judgment of the state's highest court"). Second, the Petition here raises federal claims beyond those related to the suppression of evidence seized from him by the government. Thus, even if the Petitioner could be found to have exhausted the claims raised within his interlocutory appeal, he could not be found to have exhausted all of the federal claims advanced in his Petition. A petition containing any unexhausted claims runs afoul of the exhaustion requirement. See Rose, 455 U.S. at 510, 518-20. In short, the Petitioner seemingly raised challenges through every type of filing except that which may have actually effected review of his conviction by the state's high court. His failure to exhaust state remedies could not be more plain.

The Petitioner's failure to exhaust was not excused by application of any statutory alternative to exhaustion. As in Mele, the Petitioner has not argued and cannot argue that there is an absence of state collateral procedures available to permit him to raise his federal claims. 850 F.2d at 824 (stating that court was unaware of any lack of available procedures in Massachusetts, and noting that "Massachusetts provides a broad panoply of procedures for post-conviction challenges to the validity of criminal sentences"). He also cannot maintain that any such assertion of federal claims in state court would be futile, and "it would be presumptuous . . . to conclude that [the Petitioner] is barred from seeking such relief when he has never endeavored to pursue it." Id.

criminal conviction). This Court need not reach this issue, however, in light of the Petitioner's failure to place such matters before the SJC.

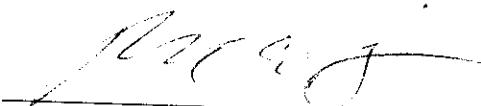
In light of the Petitioner's complete failure to exhaust state remedies and inability to invoke any statutory exception, dismissal of the Petition at issue is warranted. See, e.g., Rose, 455 U.S. at 510 (affirming that statutory scheme requires dismissal of petition containing nonexhausted claims); Duckworth, 454 U.S. at 4 ("Because obvious constitutional errors, no less than obscure transgressions, are subject to the requirements of § 2254(b), the Court of Appeals was obligated to dismiss respondent's petition.").

CONCLUSION

For the foregoing reasons, the Motion should be allowed, and the Petition should be dismissed in its entirety.

Respectfully submitted,

THOMAS F. REILLY
Attorney General


Randall E. Ravitz (BBO # 643381)
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One Ashburton Place
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Dated: November 4, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served on November 4, 2004, by first-class mail, postage prepaid, upon the following:

Fredrick J. Bush (pro se)
Plymouth County Correctional Facility
28 Long Pond Road
Plymouth, MA 02360.

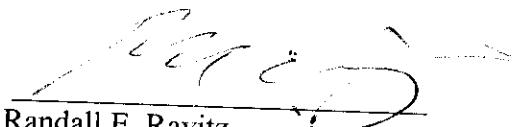

Randall E. Ravitz

EXHIBIT A

**Commonwealth of Massachusetts
SUPERIOR COURT
Case Summary
Criminal Docket**

Commonwealth v Bush, Frederick J

Details for Docket: PLCR2002-00091

Case Information

Docket Number:	PLCR2002-00091	Caption:	Commonwealth v Bush, Frederick J
Entry Date:	02/15/2002	Case Status:	Criminal 1 - CtRm 1 (Brockton)
Status Date:	11/24/2003	Session:	Disposed (appeal pending)
Lead Case:	NA	Deadline Status:	Deadline act
Trial Deadline:	03/08/2002	Jury Trial:	NO

Parties Involved

2 Parties Involved in Docket: PLCR2002-00091

Party Involved:	Role:	Defendant
Last Name: Bush	First Name:	Frederick J
Address: Homeless	Address:	
City:	State:	
Zip Code:	Zip Ext:	
Telephone:		

Party Involved:	Role:	Plaintiff
Last Name: Commonwealth	First Name:	
Address:	Address:	
City:	State:	
Zip Code:	Zip Ext:	
Telephone:		

Attorneys Involved

4 Attorneys Involved for Docket: PLCR2002-00091

**Attorney
Involved:**

Last Name: Vitali
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City: Brockton
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Telephone: 508-894-0050
Fascimile:

Firm Name:

First Name: Michael A
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Zip Ext:
Tel Ext:
Representing: Bush, Frederick J (Defendant)

**Attorney
Involved:**

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Fascimile: 508-586-3578

Firm Name: PLYM01

First Name: James M
Address:
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Zip Ext:
Tel Ext:
Representing: Commonwealth, (Plaintiff)

**Attorney
Involved:**

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Fascimile: 617-988-8484

Firm Name: MA130

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State: MA
Zip Ext:
Tel Ext:
Representing: Bush, Frederick J (Defendant)

**Attorney
Involved:**

Last Name: Moretti
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City: Boston
Zip Code: 02116
Telephone: 617-262-5558
Fascimile: 617-262-5558

Firm Name:

First Name: Michele R
Address: PMB 260
State: MA
Zip Ext:
Tel Ext:
Representing: Bush, Frederick J (Defendant)

Calendar Events

26 Calendar Events for Docket: PLCR2002-00091

No.	Event Date:	Event Time:	Calendar Event:	SES:	Event Status:
1	03/08/2002	09:00	Arraignment	1	Event held as scheduled
2	03/13/2002	09:00	Hearing: Misc Matters	1	Event held as scheduled
3	04/03/2002	09:00	Conference: Pre-Trial	1	Event held as scheduled
4	05/09/2002	09:00	Hearing: Motion	1	Event not held--joint request
5	05/20/2002	09:00	Hearing: Motion	1	Event not held--joint request
6	05/24/2002	09:00	Hearing: Motion	1	Event not held--joint request
7	05/28/2002	09:00	Hearing: Motion	1	Event not held--joint request
8	06/26/2002	09:00	Hearing: Motion	1	Event not held--joint request
9	07/30/2002	09:00	Hearing: Motion	1	Event not held--joint request
10	08/28/2002	09:00	Hearing: Motion	1	Event not held--joint request
11	09/19/2002	09:00	Hearing: Motion	1	Event not held--joint request
12	10/02/2002	09:00	Hearing: Motion	1	Event not held--joint request
13	10/11/2002	09:00	Hearing: Motion	1	Event held as scheduled
14	11/18/2002	09:00	Hearing: Evidentiary-suppression	1	Event not held--joint request
15	11/25/2002	09:00	Hearing: Motion	1	Event not held--joint request
16	11/27/2002	09:00	Hearing: Motion	1	Event held as scheduled
17	12/09/2002	09:00	Hearing: Motion	1	Event held as scheduled
18	02/13/2003	09:00	Hearing: Motion	1	Event not held--joint request
19	02/18/2003	09:00	Hearing: Motion	1	Event not held--joint request
20	03/05/2003	09:00	Hearing: Compliance	1	Event not held--joint request
21	03/10/2003	09:00	Hearing: Misc Matters	1	Event held as scheduled
22	04/01/2003	09:00	Hearing: Evidentiary-dismiss	1	Event held as scheduled
23	04/17/2003	09:00	Hearing: Motion	1	Event canceled not re-scheduled
24	04/23/2003	09:00	Hearing: Motion	1	Event not held--joint request
25	09/03/2003	09:00	Conference: Lobby	1	Event held as scheduled
26	09/15/2003	09:00	TRIAL: by jury	1	Event not held--joint request

Full Docket Entries

196 Docket Entries for Docket: PLCR2002-00091

Entry Date:	Paper No:	Docket Entry:
02/15/2002	1	Indictment returned
03/08/2002		Deft arraigned before Court

03/08/2002		RE Offense 1:Plea of not guilty
03/08/2002		RE Offense 2:Plea of not guilty
03/08/2002		RE Offense 3:Plea of not guilty
03/08/2002		RE Offense 4:Plea of not guilty
03/08/2002		RE Offense 5:Plea of not guilty
03/08/2002		RE Offense 6:Plea of not guilty
03/08/2002		RE Offense 7:Plea of not guilty
03/08/2002	2	Notice of assignment of counsel.
03/08/2002		Deft ordered held without bail.
03/08/2002	3	Commonwealth's motion for order of pre-trial detention based on dangerousness.
03/08/2002	3	Special mittimus on indictment issued.
03/08/2002		Case continued to March 13, 2002 for dangerousness hearing. (Chin, J.) T. Meany, court reporter
03/08/2002	8	Appearance of Sullivan for the Commonwealth
03/13/2002	5	Appearance of Deft's Atty: Michael A Vitali
03/13/2002	6	Order of pre-trial detention findings and reasons
03/13/2002		All prior bail orders revoked
03/13/2002		Re; Offense # 1:Bail set: \$250,000.00 Surety or \$25,000.00 CASH
03/13/2002		(Conditions of recognizance: Stay away from victim)
03/13/2002		Bail warning read
03/13/2002	7	Mittimus issued to Plymouth County Correctional Facility)
03/13/2002		Continued until April 3, 2002 for pre-trial conference (Chin,J)
03/13/2002		T.Meany, court reporter
04/03/2002	9	Pre-trial conference report filed
04/03/2002	10	Motion by Deft: for funds to hire a private investigator
05/03/2002		Continued until May 9, 2002 for discovery motions (Chin,J) T.Meany, court reporter
05/09/2002		Motion (P#10) allowed (Nonnie S. Burnes). Copies mailed May 14, 2002
05/09/2002	11	Motion by Deft: for statements of co-defendants, filed and allowed (Burnes, J.)
05/09/2002	11	Motion by Deft: for names and dates of birth of all persons present, filed and allowed (Burnes, J.)
05/09/2002	12	Motion by Deft: for production of police department reports under Rule 23
05/09/2002	12	Motion by Deft: for exculpatory evidence-rewards, promises, and consideration
05/09/2002	13	Motion by Deft: for discovery of medical evidence
05/09/2002	13	Motion by Deft: for exculpatory evidence
05/09/2002	14	Continued until May 20, 2002 by agreement for motions (Burnes,J.) C. Crawford, court reporter
05/09/2002	14	
05/09/2002	15	
05/09/2002	16	

05/20/2002		Continued until May 24, 2002 by agreement for motions (Burnes,J)
05/20/2002		K.Crawford, court reporter
05/24/2002		Continued until May 28, 2002 by agreement for motions (Burnes,J)
05/24/2002		K.Crawford, court reporter
05/28/2002		Continued until June 26, 2002 by agreement for motions (Burnes,J)
05/28/2002		K.Crawford, court reporter
06/26/2002		Continued until July 30, 2002 by agreement for motions & trial assignment (Hely,J) K.Crawford, court reporter
06/26/2002		Case continued to August 28, 2002 for hearing on motions by agreement. Leo P. Foley, Asst. Clerk R. Griffin, court reporter
08/15/2002		Case continued to September 19, 2002 by agreement for motions. (Walker, J.) R. Griffin, court reporter
08/28/2002		Case continued to September 19, 2002 by agreement for motions. (Walker, J.) R. Griffin, court reporter
09/19/2002		Continued until October 2, 2002 by agreement for motion to suppress (Walker,J.) A. MacDonald, court reporter
09/19/2002		Case continued to October 11, 2002 by agreement for motion to suppress. (Walker, J.) A. MacDonald, court reporter
10/02/2002		Case continued to October 11, 2002 by agreement for motion to suppress. (Walker, J.) A. MacDonald, court reporter
10/04/2002	17	Defendant's motion to suppress illegally seized evidence
10/11/2002		Continued until November 18, 2002 by agreement for motion to suppress (Brady,J) S.Bates, court reporter
10/11/2002		Case continued to November 25, 2002 by agreement for motion to suppress. (Ball, J.) R. Griffin, court reporter
11/18/2002		Motion by Deft: to compel discovery
11/18/2002	18	Continued until November 27, 2002 by agreement for motion to suppress (Ball,J.) R. Griffin, court reporter
11/25/2002		After hearing on defendant's motion to suppress Case continued to December 9, 2002 at the request of the defendant. Time excluded under Rule 36 (Ball,J)
11/27/2002		Motion (P#17) denied, After evidentiary hearing held on 11/27/02 and 12/9/02, Findings of Fact and ruling dictated into the record on 12/9/02 at approxiamately 3pm (Carol S. Ball, Justice).
12/09/2002	19	Motion by Deft: for the productyion of a transcript of the motion to suppress hearing; filed and allowed (Ball,j)
12/09/2002	19	Motion by Deft: for the production of a transcript of the detention hearing; filed and allowed (Ball,J)
12/09/2002	20	Notice of Interlocutory Appeal filed by Frederick J Bush
01/22/2003		Continued until February 13,2003 by agreement for motion to suppress (Sikora,J) B.StCharles, court reporter
01/22/2003	22	Deft's motion for expedited transcript filed and allowed. (Sikora, J.)
01/24/2003	22	Case continued to February 18, 2003 by agreement for discovery motion. (Chin, J.) T. Meany, court reporter
02/13/2003		
02/13/2003		

02/20/2003	23	Deft's motion for the disclosure of the identity of the informant.
02/20/2003		Case continued to March 5, 2003 by agreement for discovery
02/20/2003		compliance. (Chin, J.) T. Meany, court reporter
02/26/2003	24	ORDER(APPEALS COURT): Order denying application for Interlocutory
02/26/2003	24	Appeal
03/05/2003		Case continued to March 10, 2003 at request of the Commonwealth.
03/05/2003		(Chin, J.) T. Meany, court reporter
03/10/2003		Continued until April 23, 2003 by agreement for motions (Chin,J) T.
03/10/2003		Meany, court reporter
03/13/2003		Continued until April 1, 2003 by agreement for motion to dismiss
03/13/2003		(Chin,J) T. Meany, court reporter
04/01/2003		Continued until April 17, 2003 at request of deft for motion to
04/01/2003		suppress (Chin,J) T. Meany, court reporter
04/25/2003	25	Motion by Deft: to dismiss
04/30/2003		Motion (P#23) denied, DA agrees C.I. will not be a witness (Charles
04/30/2003		J. Hely, Justice). T. Meany, court reporter
04/30/2003		Motion (P#25) denied, The Grand Jury evidence and the reasonable
04/30/2003		inferences that the Grand Jury could draw are sufficient to provide
04/30/2003		probable cause on a knowing possession with intent to distribute
04/30/2003		regarding Indictments 004 & 005 (Charles J. Hely, Justice). T. Meany,
04/30/2003		court reporter
08/11/2003		Case scheduled on September 3, 2003 for conference (Leo Foley,
08/11/2003		Assistant Clerk)
09/03/2003		After Lobby conference with Ball,J Case scheduled before Chin,J for
09/03/2003		trial on September 9/15/03 (L.P. Foley, Asst. Clerk)
09/25/2003	26	Deft files anticipated witness list
10/14/2003		RE Offense #3 Commonwealth's moves to dismiss (Orally) with assent of
10/14/2003		defendant Allowed (Hinkle, J.) S. Bates, court reporter
10/14/2003		RE Offense 3:Dismissed
10/14/2003	27	Motion by Deft: for sequestration of witnesses, filed and allowed
10/14/2003	27	(Hinkle,J.)
10/14/2003	28	Motion by Deft: to preclude use of the term "Victim", filed and
10/14/2003	28	allowed (Hinkle,J.)
10/14/2003	29	Motion by Deft in Limine to exclude evidence of defendant's priors
10/14/2003	29	convictions ,reserved (Hinkle,J.)
10/14/2003	30	Motion by Deft: in limine to prohibit the Commonwealth from admitting
10/14/2003	30	evidence provided by an anonymous informant Allowed in part as set
10/14/2003	30	forth in open court (see record) (Hinkle,J.)
10/14/2003	31	Motion by Deft: in limine to strike prejudicial materials from
10/14/2003	31	intended Commonwealth's exhibits, moot (Hinkle,J.)
10/14/2003	32	Jury of 14 members impanelled

10/15/2003	33	Motion by Deft: for required finding of not guilty, after hearing allowed as to #1 and otherwise denied (Hinkle,J.)
10/15/2003	33	RE Offense 1:Not guilty finding
10/16/2003	34	Renewed motion by the Defendant for required finding of not guilty, denied with respect to remaining indictments (Hinkle,J)
10/17/2003		Any and all prior orders of bail are revoked
10/17/2003		Defendant remanded to the Custody of the Sheriff of Plymouth County
10/17/2003	40	Warrant for remand issued (Hinkle,J.) S. Bates, court reporter
10/17/2003		Sentencing on October 22, 2003 @ 9:00 AM (Hinkle,J.) S. Bates, court reporter
10/17/2003	35	RE Offense 2:Guilty verdict
10/17/2003	36	RE Offense 4:Guilty verdict
10/17/2003	37	RE Offense 5:Guilty verdict
10/17/2003	38	RE Offense 6:Guilty verdict
10/17/2003	39	RE Offense 7:Guilty verdict
10/22/2003		RE Offense #2 Defendant sentenced to 2 to 2 years & 1 day MCI Cedar
10/22/2003		Junction (680 days credit) (Hinkle,Justice) S. Bates, court reporter
10/22/2003	40	Defendant's motion for to set aside guilty verdict, denied (Hinkle,J.)
10/22/2003		RE Offense #4 Defendant sentenced to 2 years Plymouth County HOC from
10/22/2003		and after #2 (Mandatory) (Hinkle,Justice)S. Bates, court reporter
10/22/2003		RE Offense #5 Defendant sentenced to 2 years Plymouth County HOC from
10/22/2003		and after #4 (Mandatory) (Hinkle,Justice) S. Bates, court reporter
10/22/2003		Drug fee assessed: \$150.00
10/22/2003		Victim-witness fee assessed: \$90.00
10/22/2003		RE: offense #6 : 2 years probation (Hinkle,J.) S. Bates, court reporter
10/22/2003		RE: offense #7: 2 years probation concurrent with #6 (Hinkle,J.) S.
10/22/2003		Bates, court reporter
10/22/2003		Conditions: drug testing, random urinalysis, anger management
10/22/2003		Probation supervision fee \$65.00 per month(Hinlke,J.) S. Bates, court reporter
10/22/2003	41	Notified of right of appeal under Rule 65
10/22/2003		Notified of right of appeal under Rule 64
10/22/2003	42	#2 Warrant for commitment (with assessments) (Hinkle,J.) S. Bates,
10/22/2003	42	court reporter
10/22/2003	43	#4 Warrant for commitment (Hinkle,J.) S. Bates, court reporter
10/22/2003	44	#5 Warrant for commitment (Hinkle,J.) S. Bates, court reporter
10/22/2003	45	Abstract sent to RMV
10/22/2003	46	Memorandum in aid of sentencing
10/22/2003	47	NOTICE of APPEAL FILED by Frederick J Bush
10/30/2003	48	Notice to Justice DA and defense counsel of defendant's notice of

10/30/2003 48 appeal
10/30/2003 49 Court Reporter Bates, Susan B. is hereby notified to prepare one copy of the transcript of the evidence of October 14-17, 2003, and Court Reporter, Griffin, Regina is hereby notified to prepare one copy of the transcript of evidence of November 27, 2002 and December 9, 2002
10/30/2003 50 Court Reporter Bates, Susan B. is hereby notified to prepare one copy of the transcript of the evidence of October 22, 2003.
10/31/2003 51 Re Offense 002:Notice of appeal from sentence to Cedar Junction MCI (Walpole) filed by deft.
11/13/2003 52 Re Offense 002:Letter transmitted to the Appellate Division. All parties notified November 13, 2003
11/13/2003 52 Pro Se Motion by Deft: to waive victim witness, drug and probation supervision fee
11/17/2003 53
11/17/2003 53 Pro-se NOTICE of APPEAL FILED by Frederick J Bush
11/24/2003 53 Defendant files pro-se motion to revise and revoke sentence (hold per deft)
11/24/2003 53 Notice to Justice, D.A. and deft. of pro se motion to waive fees
12/17/2003 55 Appearance of Deft's Atty: Carlo A Obligato
01/02/2004 Motion (P#53) denied (Hinkle, Justice). Copies mailed
01/09/2004 56 Notice of assignment of counsel (CPCS)
02/02/2004 57 Appearance of Moretti for the defendant.
06/24/2004 58 Pro Se Motion by Deft: for release from unlawful restraint
06/24/2004 59 Notice to Justice, DA and deft. of pro se motion for release from unlawful restraint
06/24/2004 59
07/02/2004 Transcript of testimony received volumes # 2 from court reporter, Griffin, Regina M.
07/23/2004 60 ORDERED: (Appellate Division) that the judgements imposing said sentences stand and that said appeal be and is hereby dismissed without prejudice and without hearing
07/23/2004 60
07/23/2004 60
09/07/2004 61 Pro-se Motion by Deft: to compel

Charges

7 Charges for Docket: PLCR2002-00091

No.	Charge Description:	Indictment:	Status:
1	Class B substnc, phencyclidine/cocaine, distrib/manufac		Guilty verdict
2	Resisting a police officer making a lawful arrest		Guilty verdict
3	Assault, armed, intent to murder		Not guilty finding
4	Assault & battery, dangerous weapon		Guilty verdict

5	Dang weapon, possess/transfr gun/ammo, no ID card	Guilty verdict
6	Assault & battery, dangerous weapon	Dismissed
7	Controlled substnc, school property	Guilty verdict

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EXHIBIT B

**SUPREME JUDICIAL COURT
for Suffolk County
Case Docket**

**COMMONWEALTH vs. FREDERICK BUSH
SJ-2002-0558**

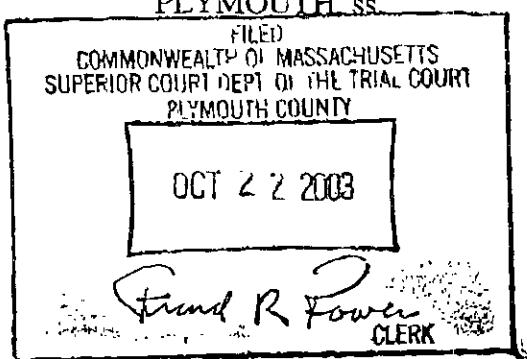
CASE HEADER			
Case Status	Interlocutory appeal denied	Status Date	02/21/2003
Nature	Lv for interloc appeal	Entry Date	12/16/2002
Sub-Nature	Mot to Suppress	Single Justice	Greaney, J.
TC Ruling	Mot to Suppress denied	TC Ruling Date	12/09/2002
SJ Ruling	Deft Int Appeal denied	TC Number	
Pet Role Below Lower Court	Defendant in lower court	Full Ct Number	
	Plymouth Superior Court	Lower Ct Judge	Carol Stroud Ball, J.

INVOLVED PARTY	ATTORNEY APPEARANCE
Frederick Bush Defendant/Petitioner	Michael A. Vitali, Esquire
Commonwealth Plaintiff/Respondent	Christine Kiggen, Assistant District Attorney

DOCKET ENTRIES	
Entry Date	Paper
12/16/2002	
	Entry Text
	Case entered.
12/16/2002	#1
	MOTION to Waive Filing Fee, filed by Attorney Michael A. Vitali.
12/16/2002	#2
	Affidavit in Support of Motion to Waive Entry Fee filed by Attorney Michael A. Vitali.
12/16/2002	
	Filing fee waived. (Per ges)
12/16/2002	#3
	Defendant's Petition for Leave to Appeal Denial of Motion to Suppress Pursuant to Mass.R.Crim.Pro.15(a)(2) filed by Attorney Michael A. Vitali with certificate of service.
02/03/2003	#4
	Memorandum of Law in Support of Defendant's Petition for Leave to File Interlocutory Appeal filed by Atty Michael Vitali with certificate of service.
02/03/2003	#5
	Transcript of Excerpt of Motion to Suppress Hearing from Plymouth Superior Court Docket No. 02-00091(001-007) dated December 9, 2002 before Ball, J.
02/03/2003	#6
	Search Warrant with attached Affidavit in Support of Search Warrant filed by Atty Michael Vitali.
02/19/2003	#7
	Commonwealth's Opposition to Defendant's Petition for Leave to Appeal pursuant to Mass. R. Crim. Pro. 15(a)(2) filed by ADA Christine Kiggen with certificate of service.
02/21/2003	#8
	ORDER: Interlocutory appeal denied. (Greaney, J.)
02/25/2003	#9
	Notice to counsel, regarding paper number 8 filed.

As of 12/28/2003 14:35

EXHIBIT C



SUPERIOR COURT
NOS. CR02-00091-001-007

COMMONWEALTH

v.

FREDERICK BUSH

NOTICE OF APPEAL

Notice is hereby given that the defendant in the above case, being aggrieved by certain opinions, rulings, directions, and judgments of the Court, hereby appeals pursuant to Massachusetts Rules of Appellate Procedure, Rule 3.

FREDERICK BUSH

By his Attorney,

Michael A. Vitali
COMMITTEE FOR PUBLIC COUNSEL SERVICES
Public Defender Division
144 Main Street, Fourth Floor
Brockton, MA 02301
508/583-5316

EXHIBIT D

11-24-03

731b

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT OF THE TRIAL COURT
PLYMOUTH COUNTY

NOV 24 2003

Fred R. Powell
CLERK

Superior Court
No(s) 2002-00091-5

COMMONWEALTH

v.

Fredrick J Bush

NOTICE OF APPEAL

Now comes the defendant in the above captioned matter who appeals the judgment of this Court on November 19, 2003 by Judge Hinckle.

Furthermore, pursuant to Rule 3(a) and 4(b) of the Mass. R. APP.P., the Court is hereby notified of his intent to appeal certain opinions, rulings, directions and judgments of the Court in the above captioned matter.

Respectfully Submitted,
By the Defendant,

Fredrick J Bush pro-se
P.O. Box 9106
Concord, MA 01742-9106

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party by mail, postage prepaid.

Fredrick J Bush
pro-se

Dated: 11-19-2003

cc: Clerk
Assistant District Attorney

EXHIBIT E

RECEIVED

SEP - 7 2004

PLYMOUTH SUPERIOR COURT

Sept 1, 2004 PAGE 02/02

(61)

Commonwealth of Massachusetts

Suffolk County

Suffolk Superior Court

Doc# PLCR 2002-00091-7

Commonwealth of Mass.

V.

Fredrick J. Bush, Pro Se.

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT. OF THE TRIAL COURT
PLYMOUTH COUNTY

SEP - 7 2004

G. R. Powers
CLERK

Motion to Compell, recognize:

Now comes defendant whom respectfully request this honorable court to recognize, compell, acknowledge, and take action to grant relief from a substantial miscarriage of Justice, and take action on Habens Corpus Motion for Unlawfull Restraint filed, docketed on June 26, 2004 at Brockton Superior Court (Margaret Hinkle presiding)

This is a subsequent pleading of a previous Motion to Compell went unanswered as Original Habens Motion on June 26, 2004.

Respectfully Submitted

Fredrick Bush, Pro Se.

Sept 1, 2004